



Solberg before the CCRB made its initial findings and recommendations on the matter." (Award at 2.) The FOP claimed that the CCRB has exclusive jurisdiction concerning complaints alleging excessive use of force and that MPD's investigation "to determine if any administrative action should be taken against the officer[] for misconduct other than that subject to CCRB jurisdiction" was "nothing more than an investigation of the complaint of use of excessive force" and therefore should be discounted. (Award at 2 and 3.) The Arbitrator agreed with the FOP's interpretation of Sec. 4-901, et seq., found FOP's claim supported by the facts before him and sustained the grievance.

Under the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the award on its face is contrary to law and public policy... ." The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, and concludes for the reasons that follow that no statutory basis for our review exists on the grounds asserted and therefore, we lack the authority to grant the requested Review.

MPD contends that by prohibiting the MPD from making an initial inquiry into other forms of impropriety outside the exclusive jurisdiction of the CCRB, which the MPD would be properly responsible for investigating, the Award is contrary to the very law and public policy that D.C. Code Sec. 4-901, et seq. "was designed to further, i.e., ensuring that allegations that police

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(Footnote 1 Cont'd)

citizen complaints concerning misconduct by officers of the Metropolitan Police Department and the Special Police employed by the District of Columbia government, when such misconduct is directed toward any person who is not a member of the Metropolitan Police Department or Special Police employed by the District of Columbia government.

(c) The Board shall have authority to act with respect to a citizen complaint alleging 1 or more of the following:

- (1) Police harassment;
- (2) Excessive use of force; or
- (3) Use of language likely to demean the inherent dignity of any person to whom it was directed and trigger disrespect to law-enforcement officers.

officers have violated their duties and responsibilities are promptly investigated and appropriately resolved by the responsible authority." (Request at 5.) Although the Arbitrator acknowledged that there are other forms of police impropriety that fall outside the jurisdiction of the CCRB, and thereby are appropriately investigated by the MPD in the first instance, he concluded that "under the special facts of this case" the complaint did not involve "another form of police impropriety besides excessive use of force", which MPD conceded as being within the exclusive jurisdiction of the CCRB. (Award at 3 and 5.)

We have held that we are not authorized by the CMPA to review an award based on the arbitrator's assessment of the evidence. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 37 DCR 5666, Slip Op. No. 248, PERB Case No. 90-A-02 (1990). MPD merely disagrees with the Arbitrator's finding as to the nature of the complaint against the Grievant and, consequently, who is "the responsible authority" for investigating such complaints. As we have stated previously, "disagreement with the Arbitrator's findings... provides no basis for Board review of [the] Award." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 3635, Slip Op. No. 220 at p.3, PERB Case No. 88-A-03 (1989).

MPD also makes a related argument that "the [A]ward is contrary...to the public policy embodied in those statutes and regulations which set forth the responsibility of the Chief of Police to maintain discipline within the Department [,i.e., MPD]." (Request at 5.) MPD argues that "in order to carry out the public policy set forth in these statutes and regulations, it must be able to make an initial inquiry to determine whether there has been serious police misconduct which warrants disciplinary action directly by the Department..." (Award at 6.) This argument is based on MPD's contention that its investigation was "attempting to ascertain whether an independent infraction for which the officer [,i.e., Grievant,] should be disciplined had occurred" and not engaged in the "processing" of a citizen's complaint when it obtained a statement from the Grievant found to be a part of its improper investigation. (Award at 7.) However, MPD's contention ignores the Arbitrator's evidentiary finding, that "the Department's inquiry [was] inexorably intertwined [sic] with the claim of excessive use of force." (Award at 4.) Thus, the Arbitrator found it was "impossible to segregate" MPD's asserted inquiry into "independent infractions", over which MPD maintained jurisdiction, from the citizen complaint charging excessive use of force, over which the CCRB possessed exclusive jurisdiction. As discussed above, such findings of fact are for the Arbitrator to decide. Id. We therefore do not find these asserted grounds for review render the Award on its face as contrary to law and public

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policy.

Accordingly, MPD has not demonstrated that a statutory basis exists for reviewing the Award, and therefore its request for Board review must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
Washington, D.C.

January 10, 1992